

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author: McClintock Analyst: Deborah Barrett Bill Number: SB 1494
Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: February 21, 2008
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Taxpayer Transparency Act Of 2008/State Agencies Shall Develop And Operate Web Site Accessible By The Public At No Cost With Specified Information

SUMMARY

This bill would require a state agency to develop a publicly accessible Web site containing specified information detailing expenditures by that agency of state funds.

PURPOSE OF THE BILL

According to the author's staff, the purpose of the bill is to ensure an open government that allows taxpayers to review state expenditures of funds.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on January 1, 2009, and specifies that the Web site be available by January 1, 2009.

POSITION

Pending.

ANALYSIS**STATE LAW**

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Generally, disclosure is authorized to other state tax agencies, federal tax agencies, and the Multi State Tax Commission solely for tax administration purposes. Additionally, FTB is authorized to publish statistical data related to taxpayer information so long as no individually identifiable information is revealed. Unauthorized disclosure of state tax information is a misdemeanor and unauthorized disclosure of federal tax information is a felony.

State law requires Department of Finance to provide an annual report to the Legislature on tax expenditures providing details on individual categories of the expenditures and historical information on the enactment and repeal of the expenditures. State law requires all state agencies to submit to the Governor a complete plan and itemized statement of all proposed expenditures and estimated revenues for the ensuing fiscal year. Each state agency is responsible for its own services acquisitions program.

Board Position:			Department Director	Date
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This responsibility includes ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, writing the contract in a manner that safeguards the state's interests, and obtaining required approvals. State agencies use contracts, purchase orders, interagency agreements, and memorandums of understanding to effectuate services acquisition programs in place.

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake. State law also provides various exemption credits, including a personal exemption credit and exemption credits for dependents, blind persons, and individuals 65 or older. These exemptions are not deductions from adjusted gross income (AGI) but are credits against tax.

THIS BILL

This bill would enact the Taxpayer Transparency Act of 2008 (Act). The act would require a state agency, with assistance from the office of the State Chief Information Officer, the Department of Finance (DOF), and the Governor's office to develop and operate a Web site accessible by the public at no cost that includes:

- Specified information on each expenditure of state funds by that agency,
- The ability of the user to view information on the Web site in a format that is searchable and can be downloaded and managed by the user with appropriate software, and
- The ability for users to provide input to DOF regarding the utility of the site and recommendations for improvements to the site.

The information required on the Web site for each expenditure of state funds, includes, but is not limited to following:

- The name and principal location or residence of each entity or other recipient of the funds.
- The amount of expenditure.
- The type of transaction.
- The identity of the department, agency, office or other entity of state government making the expenditure.
- The program budget source for the expenditure.
- A description of the purpose of the expenditure.
- A description of any item purchased pursuant to the expenditure.
- Any other information deemed relevant by DOF and the Governor's office.

The Web site is required to include information for the 2007-2008 fiscal years by January 1, 2009, and thereafter include information for the most recent completed fiscal year by June 30th each year.

The bill provides definitions of the following terms:

- “Searchable Web site” means a Web site that allows the public to search and aggregate information identified under this bill's provisions.
- “Expenditure of state funds” means the expenditure or transfer of state appropriated or non-appropriated funds in an amount in excess of one thousand dollars (\$1,000) in forms including but not limited to grants, contracts, subcontracts, purchase orders, tax refunds, rebates, credits, and expenditures from the Reserve for Revenue Fluctuations.

Expenditures of state funds do not include the transfer of funds between two departments, agencies, offices, or entities of state government, or the transfer of state or federal assistance payments to an individual recipient or beneficiary of those assistance payments.

Each department, agency, and entity of state government is required to cooperate fully with DOF and the Governor's office in gathering and providing all information necessary to comply with the requirements of this bill. The bill specifically states that nothing in the bill requires disclosure of information deemed confidential or otherwise exempt from disclosure under state or federal law.

PROGRAM BACKGROUND

The State Contract and Procurement Registration System (SCPRS) is a centralized database of information on state contracts and purchases over \$5,000 established in 2003. This database is available on the California Department of General Services Web site. Each state agency is required to report its contracts to DGS. The public can download information on the procurement expenditures of each state department and agency.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The language of the bill requires information regarding tax refunds, rebates, and credits to be accessible on the department's Web site, which would violate disclosure laws within the Revenue and Taxation Code (RTC). If it is the author's intent that confidential taxpayer information be disclosed, it is recommended that the bill be amended to add an express exception to the RTC.

This bill's provisions would require that for each completed fiscal year after January 1, 2009, information is to be made available on the Web site by June 30th. As written, it is unclear whether the author intends for the information to be available by June 30th of the fiscal year that ended or by June 30th of the following fiscal year. Clarification would assist the department to comply with the bill's provisions timely.

If this bill is signed by the Governor by September 30, 2008, it does not appear that there would be sufficient time to gather and post the required information by the due date of January 1, 2009. If additional funding is needed by the department to implement this bill, the earliest that funding would be available under normal budget processes would be June 2009, well after the date the information is required to be posted on the Web site.

Because state agencies are already required to report contracts and purchases over \$5,000 to DGS for posting in the SCPRS, the requirement to place similar contract or purchase information on agency Web sites could be duplicative. The author may want to consider requiring the threshold for reporting contracts and purchases to DGS be lowered to \$1,000, which would accomplish the same level of transparency to the public without unnecessarily duplicating information or maintenance on all state agency Web sites.

This bill would require that the department's Web site have the ability for users to provide input to DOF regarding the utility of the site and recommendations for improvements to the site. This could result in DOF becoming responsible for the Web sites of every state agency. The author should consider having each agency that maintains its own Web site to retain responsibility for responding to user input and making necessary corrections.

Requiring the department to post purchases made for physical and information security purposes would be disclosing sensitive information to the general public regarding the type, brand, and quantity of security solutions used to protect the facilities and information infrastructure. This information could be used to analyze the means necessary to breach established security perimeters and could defeat or interrupt the operations of the systems that are in place.

The bill would require a state agency to develop a "Web site" that would provide access to the information specified in the bill. This would require state agencies that already maintain their own Web sites to establish a duplicate site, which would add to the costs for maintenance and development of that Web site. The author may want to change the terminology to "web page" so that agencies with existing Web sites can add a page with the required information instead of creating an additional site.

TECHNICAL CONSIDERATION

The bill language requires posting of information on expenditures "in forms." To be more understandable, it should read "in the form of."

On page 2, line, 7, delete "forms" and insert "the form of"

LEGISLATIVE HISTORY

AB 1843 (Garrick, 2007/2008) would require a state agency, as defined, to provide the State Controller's Office (SCO) with information concerning state expenditures on programs administered by those agencies. This bill was introduced January 28, 2008, and has not yet been heard.

AB 168 (Ridley-Thomas, 2005/2006) would have required DOF to submit a report on tax expenditures to the Legislature. This bill was vetoed by Governor Schwarzenegger, whose veto message can be found in Appendix A.

AB 2106 (Ridley-Thomas, 2003/2004) would have required DOF to submit a report on tax expenditures to the Legislature. AB 2106 was vetoed by Governor Schwarzenegger, whose veto message can be found in Appendix A.

AB 990 (Ridley-Thomas, 2003/2004) would have required DOF to submit a report on tax expenditures to the Legislature. This bill failed to pass out of the Legislature by the constitutional deadline.

SB 1292 (Haynes, 2001/2002) would have required state agencies, boards, commissions, departments, and offices to provide a report regarding financial activities to specific legislative committees for the 2001/2002 fiscal years and preceding fiscal years. SB 1292 failed to pass out of the house of origin.

FISCAL IMPACT

The department would be required to develop a Web site containing the specified information. Until the implementation concerns identified above are resolved, FTB is unable to quantify the extent of the impact of this bill on the department's programs and operations.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

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Appendix A to SB 1494
Prior Legislation Veto Messages

Veto Message for AB 168

BILL NUMBER: AB 168
VETOED DATE: 09/22/2005

To the Members of the California State Assembly:

I am returning Assembly Bill 168 without my signature.

The Department of Finance and the Legislative Analysts Office currently have broad authority to review and report tax expenditures to the Legislature. This bills restatement of the existing tax reporting requirements is redundant and unnecessary.

Sincerely,

Arnold Schwarzenegger

Veto Message AB 2106

BILL NUMBER: AB 2106

VETOED DATE: 09/24/2004

To the Members of the California State Assembly:

I am returning Assembly Bill 2106 without my signature.

Under existing law, the Department of Finance already is required to provide an annual tax expenditure report to the Legislature containing specific information. This bill changes the type of information that is provided in the annual report. However, some of the information that Department of Finance would be required to report is not available. For example, the original intent of a given tax expenditure is often not clearly defined in the enabling statute. In addition, the number and income distribution of taxpayers benefiting from sales tax exemptions would not be known because this information is not required to be reported by retailers when filing their tax returns. Furthermore, some of the information might not be available for reporting to the Legislature because of existing confidentiality requirements.

Therefore, I cannot sign this bill.

Sincerely,

Arnold Schwarzenegger